IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24429 of 2005
With
CIVIL APPLICATION No.259 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-Yes.**

2 To be referred to the Reporter or not ? **-Yes.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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KANTILAL MATHUDAS DAVE - Petitioner(s)

Versus

STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR KIRAN R JANI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,
RULE NOT RECD BACK for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 27/01/2006

ORAL JUDGMENT

1.Hasmukh Kantilal Dave (detenu) through his father

Kantilal Mathurdas Dave, petitioner has filed this habeas corpus petition under Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 15/11/2005 passed by the District Magistrate, Junagadh under the provisions of Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act-1980 (for short 'PBM Act') as being illegal, invalid, null and void, arbitrary, suffers from total non-application of mind and violative of Article 14, 21 and 22 of the Constitution of India. Petition was filed on 21/12/2005. Mr.Kiran Jani, learned advocate appears on behalf of the petitioner. Shri L.R.Pujari, learned APP appears on behalf of respondents no.1 to 3. Mr.M.A.Shaikh, learned advocate appears on behalf of Union of India. On service of Rule Mr.H.C.Kadia, the Deputy Secretary of the state Government has filed an affidavit and with consent of all advocates the matter is taken up today for final hearing.

2.In this case, the District Magistrate, Junagadh, in exercise of power under the provisions of Sub Section 2 of Section 3 of Prevention of Black Marketing and Maintenance of Supplied of Essential Commodities Act,

1980 (herein after referred to as 'The Act of 1980') passed an order of detention dated 15/11/2005 on the ground that it is necessary to prevent the petitioner from acting in a manner prejudicial to the maintenance of supplies of commodities essential to the community.

3. It is the case of the petitioner that the authority has served the said order to the detenu, Hasmukh Dave on 5/12/2005 and the detenu was detained in Palanpur jail. As the detenu is in jail, his father Kantilal Dave has challenged the legality and validity of the impugned order of detention dated 15/11/2005 by means of filing this petition to issue writ of habeas corpus and to quash the order of detention passed again his son being null, void and without proper application of mind.

4. The learned Advocate has stated that the petitioner has made representation on 9/12/2005 that the document particularly FIR is illegible and therefore he has requested to supply copy of the FIR which is legible.

5. The State Government through the Section Officer dated 15/12/2005 replied to the letter and stated that they have received representation of the detenu. However,

after due consideration, the said request is rejected.

6. The learned advocate on behalf of petitioner has submitted that that certain page of an F.I.R. which has been very much relied upon at the time of passing the order of detention are quite illegible and these documents which is at serial No.13 of the index carrying pages No.77 to 88 has been well referred to and relied upon in the grounds of detention. The learned advocate further submitted that supply of illegible copy of a particular document is as good as non supply of the same and once a particular document which is referred to in the grounds of detention, it becomes part of the grounds of detention and hence non supply of the same is amounts to non supply of the grounds of detention.

7. The learned advocate has further invited my attention to page-23 and page-24 which is Annexure-D, wherein representation has been made by the petitioner on 9/12/2005 addressed to the detaining authority i.e. the District Magistrate, in which the petitioner has specifically asked for a copy of this document as according to him it was illegible. Representation

dated 9/12/2005 was addressed to the detaining authority and by that time the order of detention is approved by the State Government as per the scheme of the statute, therefore the detaining authority seizes to be detaining authority and hence the District Magistrate has rightly forwarded the said representation to the State Government on the same day as the State Government being the proper and lawful authority to consider the same. The State Government through Mr.P.U.Dave, the Section Officer simply rejected the representation on 15/12/2005 without being acceded to any of the demand made by the petitioner in his representation dated 9/12/2005.

8. The contention of the learned advocate that the supply of illegible copy of particular document is as good as non supply of the same. Once particular document which is referred to in the grounds of detention, it becomes part of grounds of detention and hence non supply of the same is amount to non supply of the grounds of detention and if the authority supply illegible pages, then it is violation of right of the detenu to make effective representation under Article 22(5) of the Constitution of India. In support of the same, the learned advocate has relied upon the judgment of the

Hon'ble Apex Court in the case of S.Gurdipsingh v. Union of India and others reported in AIR 1981 SC 362 in which the Hon'ble Supreme Court has observed as under:

> “In other words, if the documents which form the basis of the order of detention are not served on the detenu along with the grounds of detention, in the eye of law there will be no service of the grounds of detention and that circumstances would vitiate his detention and make it void ab initio.”

9. The learned advocate for the petitioner has also relied upon the judgment in the case of Dharmista Bhagat v. State of Karnataka reported in 1989 Supp. (2) SCC 155, after referring to Article 22(5) of the Constitution of India, the Hon'ble Court at page 157 has observed as under:

> “Therefore, it is imperative that the detaining authority has to serve the grounds of detention which include also all the relevant documents which had been considered in forming the subjective satisfaction by the detaining authority before making the order of detention and referred to in the list of documents accompanying the

grounds of detention in order to enable the detenu to make an effective representation to the Advisory board as well as to the detaining authority. Therefore, the non-supply of legible copy of this vital document i.e. panchnama dated February 12, 1988 in spite of the request made by the detenu to supply the same renders the order of detention illegal and bad. This Court in Mehrunissa v. State of Maharashtra has observed that: (1981) 2 SCC 709 (SCC p.710) “The detenu was entitled to be supplied with copies of all material documents instead of having to rely upon his memory in regard to the contents of the documents. The failure o the detaining authority to supply copies of such documents vitiated the detention, as has been held by this Court in the tow cases cited by counsel. The detenu is, therefore, entitled to be released. He is accordingly directed to be released forthwith.”

10.The learned advocate has also relied upon the judgment of the Hon'ble Apex Court in the case of Manjitsingh Grewal alias Gogi v. Union of India and others reported in 1990 (supp) SCC 59 particularly para 4 of the

judgment in which the Hon'ble Court has observed as under:

> “In view of the fact that the copies of the documents were, in fact, supplied at the request of the appellant, but the copies supplied were illegible, we are of the opinion, that the safeguards provided by the Constitution have not been followed.”

11. The learned advocate has also relied upon the Division Bench judgment of this Court in the case of Mulchand Sobhrajmal Ganvani v. The Secretary to the Government of Gujarat and others, reported in 1991 (1) GLR 421, particularly para 3 at page 422, this Court has referred to earlier judgment of the Hon'ble Apex Court in the case of Smt. Dharmista Bhagat (supra) as observed as under:

> “The learned Advocate for the petitioner invited our attention tot he judgment of the supreme court in the case of Smt. Dharmishta Bhagat v. State of Karnataka, reported in 1989 supp. (2) SCC 155 wherein it is laid down that it is imperative that the detaining authority must serve the grounds of detention which include also all the relevant documents which had been considered in forming the

subjective satisfaction by the detaining authority before making the order of detention, and referred to in the list of documents accompanying the grounds of detention in order to enable the detenu to make an effective representation to the Advisory Board as well as to the detaining authority. Hence the failure on the part of the detaining authority to supply legible copy of the said relevant document to the detenu for making effective representation infringed the detenu's right under Article 22(5) of the Constitution. In our opinion, in the present case also the right o the detenu to make an effective representation is infringed by non supplying a legible copy of the aforesaid document."

12. Relying upon all these decisions, the learned advocate has stated that relevancy of the documents can only be decided by the detenu that how a particular document can be used in the representation or how the detenu could show his innocence with the help of the document. Therefore the relevancy can only be decided by the detenu and not by an authority as once a particular document is relied upon in the grounds of detention.

13.The learned advocate has further drawn my attention to the representation and submitted that the petitioner never intended that his representation be considered by the Central Government in absence of certain documents and information as asked by the petitioner all though the State Government very casually forwarded the representation to the Central Government and the Central Government has also considered the same and rejected through its communication dated 27/12/2005. The communication of the State Government dated 9/12/2005 and of the Central Government dated 27/12/2005 rejecting the representation are placed on record of the case during the course of arguments. Contents thereof has not bee denied by the other side.

14.On behalf of respondents, I have heard Mr.L.R.Pujari, learned APP and Mr.M.A.Shaikh, learned advocate on this point.

15.I have perused the statement made by the learned advocate for the petitioner and seen that the documents mentioned by the petitioner are absolutely illegible. I have also shown all these documents to Mr.L.R.Pujari, learned APP as well as Mr.M.A.Shaikh, learned advocate for the Central Government and both the counsel fairly

conceded that the documents which are supplied to the detenu are illegible.

16.In the petition, the petitioner has stated ground 11, the petitioner has made out a ground that documents at serial page no.77 to 87 is a copy of F.I.R. is illegible at various pages and the petitioner has also made this grievance in his representation. Therefore, the first thing is that how detaining authority could have gone through the same carefully as claimed in the grounds of detention and secondly in eye of law supply of even partly illegible documents is as good as non supply of documents and having considered in the grounds of detention it amounts to non supply of grounds of detention, therefore on these both counts the order of detention can not stand legally and has to be quashed and set aside on grounds of non application of mind and on the grounds of non supply of vital material relied upon in the grounds of detention. Therefore the order of detention is void ab initio.

17.I have referred to the affidavit filed by the authority. In the affidavit, the said ground has not specifically dealt with. Therefore, virtually there is admission on the part of the petitioner.

18.In the grounds of detention, it has been clearly stated that along with grounds of detention, all the documents which has been referred has been annexed and sent to the petitioner in this behalf and therefore, the authority has relied upon this aspect also in this behalf.

19.In view of the aforesaid judgments of the Hon'ble Supreme Court and the Division Bench judgment of this Court, the following proposition emerges:

> “If the documents which form the basis of the order of detention are not served on the detenu along with the grounds of detention, in eye of law there will be no service of the grounds of detention.”

20.Even if the grounds of detention are supplied but in the grounds of detention, if some of the copies of the grounds of detention are illegible, the same ratio will apply. For the same, I rely upon the judgment of the Hon'ble Supreme Court in the case of Dharmishta Bhagat (supra) and the judgment of the Division Bench of this Court in the case of Mulchandbhai (supra) in which it

is held that if the copies of illegible documents are supplied to the petitioner, the right to make effective representation is violated under the Article 22(5) of the Constitution of India.

21.In the instant case, I have seen that a specific request is made by the petitioner and have asked for a particular document to supply to the detenu with a view to make an effective representation. Instead of considering the same, the State Government has rejected the same without assigning any reasons.

22.On one hand when the petitioner has made complaint that without proper documents, his representation may not be considered by the Central Government. Still the State Government has forwarded the same to the Central Government. Mr.M.A.Shaikh, the learned counsel for the Central Government is not in a position to explain as to why the Central Government has considered the representation of the petitioner even thought the petitioner has not addressed the same to the Central Government. On reading the representation, it is abundantly clear that petitioner sought certain information, clarification and legible copy of one document with a view to make an effective

representation. Naturally it may be the highest authority. The petitioner has not made any request to the concerned authority to forward his representation to the Central Government for its consideration.

23.At this stage, both the learned advocates for the State as well as the Union of India stated that in this case, it is only a ground of giving illegible copies of certain pages i.e. FIR and in on this very ground, the petitioner against whom the authority has raised the ground that he should be detained under the provisions of PBM Act and in the ground also, various grounds have been stated wherein the detenu is carrying illegal activities in view of the provisions of Essential Commodities Act and in view of the provisions of Petroleum Act wherein the Government has made serious allegations regarding black marketing in this behalf. When this such serious incident has been alleged, the Court may not consider this technical aspect of non supply of illegible documents and detention order will not be quashed and set aside.

24.It may be noted that arguments of the learned counsel for the respondents are very attractive but unfortunately it will not be possible for this Court to

accept the same. In this behalf I have no alternative but to accept the contentions of the petitioner and I crave leave to refer to and rely upon the judgment of the Hon'ble Apex Court in the case of Rattan Singh v. State of Panjab and others, reported in (1981) 4 SCC 481, particularly para 4 at page 483, the Hon'ble Court has observed as under:

> “May be that the detenu is a smuggler whose tribe (and how their numbers increase!) deserves no sympathy since its activities have paralysed the Indian economy. But the laws of preventive detention afford only a modicum of safeguards to persons detained under them and if freedom and liberty are to have any meaning i our democratic set-up, it is essential that at lease those safeguards are not denied to the detenus.”

24.1 It may stated that the aforesaid observation has also been relied upon by the Constitution Bench of the Hon'ble Supreme Court in the case of Kamleshkumar Ishwardas Patel v. Union of India and others, reported in (1995) 4 SCC 51 where Mr.Justice S.C.Agrawal, speaking for the Constitution Bench has relied upon the said passage and in para 49, the Supreme Court has observed as under:

"At this stage it becomes necessary to deal with the submission of the learned Additional Solicitor General that some of the detenus have been indulging in illicit smuggling of narcotic drugs and psychotropic substances on a large scale and are involved in other anti-national activities which are very harmful to the national economy. He has urged that having regard t the nature of the activities of the detenus the cases do not justify interference with the orders of detention made against them. We are not unmindful of the harmful consequences of the activities in which the detenus are alleged to be involved. But while discharging our constitutional obligation to enforce the fundamental rights of the people, more especially the right to personal liberty, we cannot allow ourselves to be influenced by these considerations. It has been said that history of liberty is the history of procedural safeguards. The Framers of the Constitution, being aware that preventive detention involves a serious encroachment on the right to personal liberty, took care to incorporate, in clause (4) and (5) of Article 22, certain minimum safeguards for the protection of persons sought to be preventively

detained. These safeguards are required to be 'zealously watched and enforced by the Court". Their rigour cannot be modulated on the basis of the nature of the activities of a particular person."

25.I have considered all the facts and circumstances of the case. In view of the judgments of the Hon'ble Apex Court and a judgment of the Division Bench of this Court, I have no alternative but to quash and set aside the order of detention dated 15/11/2005 passed by the District Magistrate, Junagadh against Hasmukh Dave, detenu and allow the petition.

26.In view of the same, petition is allowed. The order of detention dated 15/11/2005 passed by the District Magistrate, Junagadh is quashed and set aside. Hasmukh Kantilal Dave, detenu is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly with no order as to cost. Direct service is permitted.

27.In view of the petition allowed, Civil Application No.259 of 2006 for parole leave does not survive. Civil Application is disposed of accordingly.

(K.M.MEHTA, J.)

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